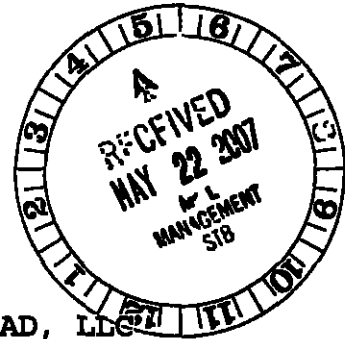


ORIGINAL

219357

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 35019

WESTERN NEW YORK & PENNSYLVANIA RAILROAD, LLC
-LEASE AND OPERATION EXEMPTION-
CERTAIN ASSETS OF NORFOLK SOUTHERN RAILWAY COMPANY AND
CHAUTAUQUA, CATTARAUGUS, ALLEGANY AND STEUBEN SOUTHERN TIER
EXTENSION RAILROAD AUTHORITY

PETITION TO REJECT OR TO
STAY OPERATION OF NOTICE OF EXEMPTION
(Expedited Handling Requested)

ENTERED
Office of Proceedings

MAY 22 2007

Part of
Public Record

Samuel J. Nasca,^{1/} on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), petitions the Surface Transportation Board (Board), that it reject the notice of exemption, filed May 17, 2007, by Western New York & Pennsylvania Railroad, LLC, (WNYP). If the notice is not rejected, the Board should stay the operation of the notice for a minimum of an additional 30 days, or until July 16, 2007.

WNYP proposes to lease and operate approximately 98.3 miles of line currently operated by Norfolk Southern Railway Company (NS), between Machias Junction, NY, and Driftwood, PA.

The notice should be rejected, or stayed, because WNYP has not filed the requisite notice to employees at least 60 days prior to the effective date of the exemption.

^{1/} New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany, NY 12205.

1. WNYP's notice of exemption was filed May 17, 2007. The Board's rules provide the exemption shall become effective 30 days thereafter, or on June 16, 2007. However, the accompanying notice to employees, required to invoke the exemption, must be filed with the Board at least 60 days prior to the effective date of the exemption. 49 CFR 1150.42(e).

2. WNYP's failure to accord proper notice to employees, through filing with the Board, requires that the Board reject the notice in its entirety, or stay operation of the notice until July 16, 2007.

3. Where a carrier seeks to shorten the 60-day notice to employees, it has done so through a waiver petition, based upon a claimed hardship, and usually without opposition from employee organizations. Here, WNYP has not sought waiver, or alleged any facts warranted waiver on the Board's own initiative, and any reduction in the full notice period is opposed by employees. WNYP Washington DC counsel is experienced in STB line transaction matters.

4. The proposed lease is extensive-approximately 98.3 miles. The trackage involves at least two different owners, and traverses several employee districts. In actual fact, employees need additional time to be appraised of their respective rights and remedies, and to consult with their carrier and employee representatives. Residence changes could be impacted; also, retirement plans.

5. The waiver provisions for 49 CFR 1150.42(e) have been abused in the past. It had been understood the Board henceforth would rigorously enforce the 60-day advance filing rule. Cf. F.D.

No. 34555, City of Tacoma, Etc.-Acquisition and Operation Exemption-Lakeview Subdivision, Quadlock-St. Clair, and Belmore-Olympia Rail Lines in Pierce and Thurston Counties, WA. (dated and served Sept. 27, 2004). The Board recently has recognized the importance of adequate notice to the public in reviewing critical time periods. No change was made in the required 60-day employee notice filing period. See: Ex Parte No. 659, Public Participation in Class Exemption Proceedings. (served Oct. 19, 2006).

6. This request for rejection or stay is made without prejudice for UTU-NY to renew its request for rejection or stay, or to seek revocation, at a later date.^{2/}

The Board should reject the notice of exemption, or stay the operation of the exemption, until July 16, 2007.

Respectfully submitted,



GORDON P. MacDOUGALL
1025 Connecticut Ave., N.W.
Washington DC 20036

May 22, 2007

Attorney for Samuel J. Nasca

Certificate of Service

I hereby certify I have delivered a copy of the foregoing, by personal service upon counsel for WNYP, Kevin M. Sheys, 1601 K Street, N.W., Washington DC 20006.

Washington DC


Gordon P. MacDougall

2/ It is hoped the Board would advise the public, and employees, as to the proper effective date in the Board's forthcoming Federal Register notice, in the event the notice of exemption is not rejected.